

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DESIGN BASICS, LLC

Plaintiff,

v.

**LION ENTERPRISES,
INCORPORATED,
BASTIAN HOMES, LTD., and
EUGENE J. BASTIAN**

Defendants.

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CIVIL ACTION NO.

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Design Basics, LLC, Plaintiff, files this Complaint against Lion Enterprises Incorporated, Bastian Homes, Ltd., and Eugene J. Bastian, Defendants, and for its causes of action alleges the following:

Parties

1. Design Basics, LLC is a Nebraska Limited Liability Company. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc. owned as of that date. Design Basics, LLC and its predecessor (Design Basics, Inc.) will hereinafter be referred to as "Design Basics" or "Plaintiff."

2. Defendant, Lion Enterprises, Incorporated (“Lion”) is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Harrisburg, Pennsylvania. Lion uses the trade name “Bastian Homes”.

3. Defendant, Bastian Homes, Ltd. (“Bastian Homes”), is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Harrisburg, Pennsylvania, and is related by trade name to Lion Enterprises, Incorporated.

4. Defendant, Eugene J. Bastian (“Bastian”), is an individual registered as a copyright author and copyright claimant for Defendants’ infringing works set forth in paragraph 17. Bastian uses the trade name “Bastian Homes”. On information and belief, Eugene J. Bastian, as President of Lion Enterprises, Incorporated, and Bastian Homes, Ltd., has the right and ability to supervise the activities and has a financial interest in each entity. Collectively, Defendants Lion Enterprises, Incorporated, Bastian Homes, Ltd., and Eugene J. Bastian are referred to as “Defendants.”

Jurisdiction and Venue

5. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

6. Venue is proper in this District under 28 U.S.C. § 1400(a) because the Defendants may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District and the Defendants reside and conduct business in this District.

Factual Background

7. Design Basics is a building design firm engaged in the business of creating, marketing, publishing, and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (“AWCPA”)) and technical drawings depicting architectural works. The firm owns copyrights protecting the architectural works and technical drawings it has created.

8. Design Basics is the author and the owner of all copyrights in the following designs: Plan No. 2316 – Franklin; and Plan No. 6715 – Sycamore.

9. Design Basics registered the following architectural works copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 2316 – Franklin	VA 1-931-768 ¹
Plan No. 6715 – Sycamore	VA 983-360 ²

¹ See Exhibit A, Certificate of Copyright Registration for Plan No. 2316 – Franklin

² See Exhibit B, Certificate of Copyright Registration for Plan No. 6715 – Sycamore

10. Design Basics registered the following technical drawings copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 2316 – Franklin	VA 485-132 ³

11. For the remaining copyright (technical drawing copyright for Plan No. 6715 – Sycamore), Design Basics applied for the registration of such copyright with the United States Copyright Office. For the application referenced herein, Design Basics (1) paid the requisite fees to the Copyright Office; (2) deposited copies of the work with the Copyright Office; and (3) sent the registration application to the Copyright Office. The Copyright Office received all such applications, fees and deposits.

12. The foregoing works described in paragraphs 7-11 above will be referred to collectively as the “Copyrighted Works.”

13. For many years, the Copyrighted Works have been widely disseminated nationwide, including in this District, in numerous Design Basics’ plan books and publications. Additionally, each of the Copyrighted Works has been published in various online publications, including www.designbasics.com.

14. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

³ See Exhibit C, Certificate of Copyright Registration for Plan No. 2316 – Franklin

15. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title, and interest in and to the Copyrighted Works.

16. Defendants engaged, at least in part, in the business of creating, publishing, distributing, and advertising residential home designs through traditional print media, on the internet on sites such as www.bastianhomes.com, and in marketing, advertising, constructing, and selling homes built according to such designs.

17. Defendants published, distributed, marketed, and advertised certain architectural designs for residential homes, each consisting of a floor plan and exterior elevations that Defendants have identified and marketed under the following model names:

- The Savannah
- The Richmond A
- The Richmond B
- The Richmond C

18. Defendants are actually aware of Design Basics and the works that Design Basics markets. Defendants first purchased one of Design Basics' home plan books in 1998 and received additional home plan publications from Plaintiff through Design Basics' customary business practices to distribute periodic publications to its customer mailing lists.

19. Defendant also had access to the Copyrighted Works through its predecessor Patwil Homes. Patwil Homes ordered Plaintiff's library of home plan

books on October 23, 1992. Plaintiff, in its customary business practice to distribute periodic publications to customers, began sending quarterly home plan publications to Patwil Homes after Patwil's plan book order.

20. Defendants violated and continue to violate Design Basics' exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works, and the right to sell) by copying, publishing, distributing, advertising, marketing, selling, or constructing in the marketplace plans, drawings, and houses that were copied or otherwise derived from the Copyrighted Works, as detailed below:

- a. Defendants' "Savannah" (and any predecessors, copies, or derivatives of this model under the same name or a different name) infringes the Design Basics Plan No. 6715 – Sycamore (and any derivative thereof).
- b. Defendants' "Richmond A," "Richmond B," and "Richmond C" (and any predecessors, copies, or derivatives of these models under the same names or a different name) infringe the Design Basics Plan No. 2316 – Franklin (and any derivatives thereof).

Cause of Action: Copyright Infringement

21. Design Basics complains of Defendants for copyright infringement, and incorporates paragraphs 1 through 20 above by reference.

22. Defendants' construction and sale of homes and creation of associated design and construction drawings based on Design Basics' Copyrighted Works has

infringed and continues to infringe Design Basics' copyrights of the Copyrighted Works.

23. Defendants' creation and publication of non-pictorial representations based on Design Basics' Copyrighted Works have infringed and are infringing Design Basics' copyrights in the Copyrighted Works.

24. On information and belief, Eugene J. Bastian has had the right and ability to supervise the activities of Lion and Bastian Homes, and he has had a financial interest in both entities. Therefore, Eugene J. Bastian is vicariously liable for the infringement of Design Basics' Copyrighted Works.

25. Design Basics is entitled to recover the actual damages it suffered as a result of the foregoing infringement and all of Defendants' profits from such infringement under 17 U.S.C. § 504(b).

26. In the alternative to the actual damages and infringer profits sought above, Design Basics is entitled to an award of statutory damages for all infringements of Design Basics' Copyrighted Works under 17 U.S.C. § 504(c).

27. Under 17 U.S.C. § 505, Defendant is liable for Plaintiff's costs and reasonable attorney's fees incurred in this action.

28. Additionally, under 17 U.S.C. § 502, Design Basics is entitled to preliminary and permanent injunctions prohibiting Defendants from further infringing on its copyrights, including but not limited to the further use of

infringing plans; creation or use of derivative plans; and construction, sale, or rental of infringing structures.

29. Furthermore, this Court should issue an order under 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works in possession of Defendants or their respective agents or contractors in violation of Plaintiff's exclusive rights, and (b) upon final hearing of this case, destroy or otherwise dispose of those copies.

Conditions Precedent

30. With respect to all counts, Design Basics generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by Defendant.

Jury Demand

31. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands trial by jury of all issues so triable.

Prayer

WHEREFORE, Design Basics, LLC prays that Defendants, Lion Homes, Inc., Bastian Homes, Ltd., and Eugene J. Bastian be cited to appear and answer, and that upon final trial Plaintiff has and recovers from Defendants as set forth

above, that it have permanent injunctive relief against Defendants as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,

Dated: May 18, 2016

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Pro hac motions pending

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